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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,285	05/29/2001	Frank Pipers	408.015A	6237

7590 06/18/2002  
Bierman, Muserlian and Lucas  
600 Third Avenue  
New York, NY 10016

EXAMINER

COOK, REBECCA

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 06/18/2002 7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/867,285

Applicant(s)

Pipers

Examiner  
Rebecca Cook

Art Unit  
1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6 6) ☐ Other:

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The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Support for the subject matter of claim 20 was canceled by the amendment of 4/3/02.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

✓ It is not clear that all mammals require the instant method. Amending claim 1 to recite “in a mammal in need thereof” will overcome this rejection.

✓ In claim 10 it is not clear what is meant by the term “periodic” and it is not seen that it is defined in the specification.

✓ In claim 12 the word “may” is confusing as to whether the mammal is subject to conditions that are stressful or increase the risk of ulcer formation.

✓ In claim 16 it is not clear what the difference is between “controlled release” and “long lasting delivery.”

In claim 19 it is not clear what is meant by “basifying agent” and it is not seen that it is defined in the specification.

In claim 20 it is not clear what the word “including” is intended to claim. The term “and/or” is confusing. In re Anderegg 51 USPQ 66.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over FDA Federal Register (FDA), Papich or WO 96/31213, alone or in combination.

FDA (summary) discloses that omeprazole is used to prevent ulcers in horses.

Papich (abstract, pp. 502-504, Table I) discloses that antiulcer drugs, including omeprazole, are used to prevent ulcers in small animals.

WO 96/31213 (pages 1-7) discloses the compositions comprising proton pump inhibitors (PPI) including the composition of claim 10 and recited dosage and that they can be used in a method to treat gastric ulcers in animals.

Some dependent instant claims differ over the references in frequency of administration, route of administration, formulation and human administration. However, it is well known in the art that PPIs are used to treat gastric ulcers in humans and animals and it would be obvious to one of ordinary skill that a compound that is used to prevent gastric ulcer in an animal could also be used in a human. Furthermore, once the usefulness of a compound is known it is within the skill of the artisan to determine optimum frequency and route of administration and formulations.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to a first method of use, classified in class 514, subclass 338, among others.

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- II. Claim 20, drawn to a second method of use, classified in class 514, subclass 338, among others.

The methods are distinct and capable of supporting separate patents.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Cook whose telephone number is (703) 308-4724. The examiner can normally be reached on Monday through Friday from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

  
REBECCA COOK  
PRIMARY EXAMINER  
GROUP 1200

June 13, 2002